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Tami Bogert
General Counsel
Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814-7243

Re: Comments on Proposed Changes to PERB Regulations on Proof
of Support

Dear Ms. Bogert:

This letter constitutes the comments of SEIU Local 1000 on PERB's proposed changes to the proof of support process - particularly as applicable to the Dills Act. (Regulation §§ 32700 and 32705.) First, Local 1000 generally supports the comments submitted by SEIU California State Council. However, Local 1000 also supplies the additional comments to the process.

1. Revocation Cards Inapplicable to Rescission and Decertification

The proposed regulations do not set forth any legitimate analysis explaining why revocation cards, which are being recognized for every other part of the proof of support process, should be excluded from use in rescission and decertification petitions. (*See, e.g.* §32705(b).) The superficial and generalized comment that such matters would result in an election does not adequately justify the denial of use of cards.

The principal that generates the appropriate use of revocation cards applies equally to the rescission or decertification setting. Apparently, however, PERB is favoring the use of such cards in settings in which an employer could benefit from their collection but ignoring and disallowing their use in those matters in which the employer does not have a stake in the process. Consequently, when the matter involves a union - particularly an incumbent union - in a petition collection process involving its represented workers, no such cards are permitted. This seems to contradict both logic and fairness.

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The revocation card process has equal bearing in the determination of the proof of support in all matters, not just those in which no election is guaranteed. PERB should not disallow the use of revocation cards simply on the grounds that the matter, if support is shown, will go to an election. At least for this Union, elections can be costly, statewide endeavors which distract from the normal priorities of representing the affected workforce. As a result, the purpose of showing the actual level of employee support is equally served by having revocation cards offset signatures in rescission and decertification petitions as in any other petition collection process that is overseen by PERB. To find otherwise unfairly disadvantages employee organizations.

2. *The Proposed Regulations Should Allow Employee Organizations to Collect Revocation Cards*

Next, the proposed regulations need modification concerning whether employee organizations may collect revocation cards and furnish them to PERB. Currently, as proposed in §32705(b)(2), only an employee may furnish the cards to PERB. For the reasons stated in the comments supplied by SEIU State Council, there is a serious need to protect against the coercive conduct of the employer in collecting revocation cards, particularly with regard to the recognition process. However, the logic that dictates building in protections against employer coercion, do not apply to employee organizations for at least two significant reasons.

First, because of the employer-employee relationship, there is an inherent tendency for an employee - particularly one who may be at will - to feel beholden and obligated to the employer's wishes and desired outcome for a union organizing drive. As a result, if an employer is able to collect revocation signatures at the same time as passing out paychecks, there is obviously a concern to protect against the implied *quid pro quo*. However, unions do not hold the same status as an employer, and they do not have a remunerative relationship with the worker that leads to inherent coercion. Indeed, Local 1000 flatly rejects the notion that today's unions bear any type of a coercive relationship with workers. Such notions can only be the vestiges of decades-old stereotypes of post-depression era ersatz union bullies.

Second, traditional labor law principles require employer neutrality in the signature collection and election process. Indeed, PERB has recognized that the obligation of the employer is "strict neutrality." (See, e.g. *Manton Joint Union elementary School District* (1993) PERB Dec. No. 906 [17 PERC 24003.])

However, such a requirement - particularly such a conclusive standard - does not extend to employee organizations. Instead, the union's conduct - if alleged to be misdirected - can easily be addressed through the objection process or the unfair practice charge process.

As a result, the language of the proposed PERB regulation in §32705(b)(2) should be modified as follows:

Be contained in an individual card or letter signed
by the employee furnished to PERB by the
employee or his or her authorized representative.

3. *The Proposed Regulations Should not be Applied Retroactively*

The Union is currently engaged in appeals before this Board and in disputes at the administrative level involving the use of revocation cards. As a result, the Union opposes the adoption of regulations which are contemplated for use retroactively to decide disputes. In keeping with the Board's decision in *Healdsburg Union HSD & Healdsburg Union SD/San Mateo City SD* (1984) 8 PERC 15021, p. 143, where a regulation does not specifically authorize its retroactive application, a decision must be governed by statute and regulations in effect at time controversy arose. (*Citing* Code of Civil Procedure section 3.) The Union has not found any language in the proposed regulation that would authorize retroactive application. Consequently, no administrative level decision should be reversed using the logic that the new regulations, assuming they have been adopted, may offer a different result.

If you have any questions about these comments, please feel free to inquire further. Thank you for your consideration.

Very truly yours,



ANNE M. GIESE
Attorney

AMG/rje